to commit a juvenile to a rigid institution like the Henry Gurney School must be carefully exercised. The urge to escape from custody to return home is an irresistibly natural rather than a culpable act of all freedom loving people of which our young children form no exception. Many factors have to be examined such as a juvenile's family background, his attachment to his members of his family, any extenuating circumstances that might provoke his desire to escape, his compatibility with his present school in particular his relationship with the staff of the school, and *vice versa*, the frequency of his escapades, the previous offences for which he has been committed to this school and any other special reason that he may offer must be taken into consideration. In this regard it would be a great interest to the Court if a juvenile could be persuaded to state in confidence to the Court the causes rather than the admission for his escaping from custody.

A Juvenile Court should always bear in mind that the committal order to the Henry Gurney School is a very last resort to be adopted in matters of this nature. Sending a juvenile to a place of detention which is not merely more rigorous but which unfortunately also exposes the child to the company of indurated and mature offenders may not be in the best interest of the juvenile.

I do not think it is fair for us to assume that a drop-out from one approved school cannot be turned into a worthy inmate in another similar institution. Wherever possible a juvenile should be given an opportunity to have a second chance at another place before condemning him to a more rigid place of reformation. When a juvenile exhibits persistent tendencies to escape, it would be desirable for the authorities concerned to take an early step to get him transferred to another school before he attains the age of 14. Even after the attainment of that age, there is nothing to prevent the authorities from transferring him from one school to another by invoking the provision of section 41 of the Juvenile Courts Act. If in spite of his second chance in another school the juvenile persists with his escapades, then obviously committal to Henry Gurney School is the proper remedy.

The two juveniles herein shall be remanded in custody in Rumah Budak Laki-Laki Tun Abdul Aziz, Melaka and be produced in the Juvenile Court in Melaka at its next sitting.

Order accordingly.

KASTURI PALM PRODUCTS v. PALMEX INDUSTRIES SDN. BHD.

[O.C.J. (Mohamed Dzaiddin J.) November 4 & December 2, 1985]

[Penang – Originating Summons No. 151 of 1981]

Arbitration – Award made in London – Plaintiff firm resident in India – Leave to enforce award – Whether Malaysian law complied with – Arbitration Act, 1952, s.4.

Practice and Procedure – Foreign plaintiff – Security for costs – Discretion of Court – R.H.C. 1980, O.23 r.1(i), O.67 & O.69 r.6.

The plaintiff firm carries on business in Bangalore, India. Its managing partner, an Indian national, also resides there. The plaintiff seeks to enforce the award of Arbitration No. 1917 dated January 28, 1980 adjudicated by the Arbitrators in London. The defendants are contesting the legality of the Arbitration award and are applying for an order requiring the plaintiff to furnish security for costs before the main application is heard. The question is whether it is just to order security for costs.

Held: (1) under Order 23 rule 1(i), security for costs cannot now be ordered as of right from a foreign plaintiff but only if the Court thinks it just to order depending on the circumstances of the case;

(2) the inference here is that the plaintiff may not have complied with Order 69 rule 6 of the Rules of the High Court, 1980;

(3) in the exercise of his discretion, the learned Judge ordered the plaintiff to deposit $10,000 in Court as security for costs before the next hearing date.

Cases referred to:

(1) *Sir Lindsay Parkinson & Co. Ltd.* v. *Triplan Ltd.* [1973] 2 All E.R. 273.

(2) *Aeronave SPA & Anor.* v. *Westland Charters Ltd. & Ors.* [1971] 3 All E.R. 531.

ORIGINATING SUMMONS

S.P. Annamalai for the plaintiffs.

Ghazi Ishak for the defendants.

Cur. Adv. Vult.

Mohamed Dzaiddin J.: The plaintiff is a firm carrying on business at No. 368, 14th Cross, Upper Palace Orchards, Bangalore, India. The managing partner is an Indian national also residing in Bangalore. The plaintiff has filed an application for leave of this Court pursuant to section 27 of the Arbitration Act 1952 to enforce the award of Arbitration No. 1917 dated January 28, 1980 which was adjudicated by the Arbitrators in London pursuant to the Rules of Arbitration and Appeal of Federation of Oils, Seeds, Fats, Association (FOSFA), 24 St. Mary Axe, London EC3A 8ER.

The defendants have entered an appearance and are contesting the legality of the Arbitration award. However, for the present proceedings the defendants have applied before me for an order that the plaintiff furnishes security for costs before the main application is heard on the grounds that the plaintiff is ordinarily resident out of the jurisdiction of the Court. In fact, the defendants' solicitors had written to the plaintiff's solicitors asking for a sum of $15,000.00 as security for cost. The defendants' application is supported by the affidavit of Mr. Chan Kai Koon, the Marketing Director of the company affirmed on October 31, 1985 (Encl. 16). According to him, the defendants are resisting the main application on three main grounds, *i.e.* that the award is null and void, that it was procured by suppression of material facts and thirdly the enforcement of the award is contrary to public policy and the laws of Malaysia.

Order 23 Rule 1(i) provides that the Court may order security for costs "if, having regard to all the circumstances of the case, the Court thinks it just to do so." "These words have the effect of conferring upon the Court the real discretion and indeed the Court is bound, by virtue thereof, to consider the circumstances of each case, and in the light thereof to determine whether and to what extent or for what amount a plaintiff may be ordered to provide security for costs. It is no longer, for example, an inflexible or rigid rule that a plaintiff resident abroad should provide security for costs." (*Supreme Court Practice 1985* Vol. 1 p.384). In exercising its discretion, it is clear that the Court will have regard to all the circumstances of the case. For the circumstances, see *per* Lord Denning M.R. in *Sir Lindsay Parkinson & Co. Ltd.* v. *Triplan Ltd.*[1]

However, in *Aeronave SPA & Anor.* v. *Westland Charters Ltd. and Ors.*,[2] Lord Denning M.R. in his judgment at p.533 stated as follows:

"I agree ..... that the rule does give a discretion to the court. In 1894 in *Crozat* v. *Brogden* Lopes L.J. said that there was an inflexible rule that if a foreigner sued he should give security for costs. But that is putting it too high. It is the usual practice of the courts to make a foreign plaintiff give security for costs. But it does so, as a matter of discretion, because it is just to do so. After all, if the defendant succeeds and gets an order for his costs, it is not right that he should have to go to a foreign country to enforce the order ..... The ordinary rule still remains, that it is a matter of discretion. ....."

In the present case, the question is simply whether or not it is just to order security for costs? In my opinion, two major considerations clearly merit my attention. The first consideration is of course the fact that the plaintiff is ordinarily resident out of this jurisdiction. Admittedly, under Rule 1(i), security for costs cannot now be ordered as of right from a foreign plaintiff, but only if the Court thinks it just to order depending on the circumstances of the case. Secondly, it is material to consider one of the grounds of the defendants in disputing the plaintiff's main application. It is deposed by Mr. Chan that the enforcement of the award is contrary to public policy and the laws of Malaysia. Here, it is pertinent to ask whether or not the plaintiff has complied with Order 69 Rule 6 of the Rules of the High Court 1980. Under this rule the present award by the Arbitrators become enforceable in the same manner as a judgment given by a court in the United Kingdom under the Reciprocal Enforcement of Judgments Act 1958. Section 4 of the Act provides that a Judgment Creditor may apply to the High Court at any time within six years after the date of the judgment or after the date of the last judgment given to have the said judgment registered in the High Court. Order 67 provides the procedure for such an application which must be supported by an affidavit exhibiting among other things the judgment or certified copy thereof. If the order is granted the judgment must be registered and notice of registration must be served on the Judgment Debtor. From the affidavits of the parties it is quite clear that nowhere was any mention made by the plaintiff regarding the registration of the Arbitrators Award in this Court or notice thereof. The inference here is that the plaintiff may not have complied with Order 69 Rule 6. Undoubtedly, this is, of course, one of the issues to be contested in the main application as being contrary to the laws of Malaysia.

However, for the present application I am satisfied that the defendants should be entitled to an order sought for. Accordingly, in the exercise of my discretion I order the plaintiff to deposit a sum of $10,000.00 into Court being security for costs before the next hearing date. Costs of this application shall be costs in the cause.

Order accordingly.

Solicitors: *Annamalai & Co.; Presgrave & Matthews.*